United States Court of Appeals for the Second Circuit



APPENDIX

No.74-1194

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

ROBERT L. WOLF,

Appellant

Appeal from the United States District Court For the Southern District of New York

JOINT APPENDIX

HOWARD A. HEFFRON

1700 Pennsylvania Avenue, N.W. Washington, D.C. 20006

RICHARD J. MEDALIE

Epstein, Friedman, Duncan and Medalie 1700 Pennsylvania Avenue, N Washington, D.C. 20006

Attorneys for Appellants



PAGINATION AS IN ORIGINAL COPY

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Note: None of the trial proceedings is reproduced in the Joint Appendix. All references to the trial proceedings are to the original trial transcript (Tr.).



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

73 Cr. 486

ROBERT L. WOLF,

Defendant.

RELEVANT DOCKET ENTRIES

Date	Proceedings
5-24-73	Filed indictment.
	* * * *
6-6-73	Not guilty plea entered. 10 days for motions. Deft. R.O.R case assigned to Judge Wyatt Cannella, J.
	* * * *
6-6-73	Filed notice of appearance of Murry Appleman, 253 B'way N.Y.C. 349-8635
6-14-73	Pre-trial confr. held, Trial Nov. 13, 1973 10:00 A M WYATT, J.
11-7-73	Pre-trial confr. held WYATT J.
	* * * *
11-13-73	Trial begun, with a jury before Judge Wyatt.
11-14-73	Trial continued.

11-15-73 Trial continued....

11-16-73 Trial continued.

11-21-73 Trial continued from November 16, 1973.

11-23-73 Trial continued.

11-26-73 Trial continued.

1-18-74

Trial continued and concluded. Jury finds the Deft. guilty on each of counts 1 THRU 8. Sentence January 18, 1973. at 2:30 PM. Pre-sentence invest. ordered. Deft. cont'd ROR. WYATT, Jr.

It is adjudged that the Deft. is hereby committed to the custody of the Atty General for imprisonment for a period of TWO (2) YEARS, on each of COUNTS 1, 2, 3, 4, to run concurrently with each other, pursuant to Title 18, Section 3651, U. S. Code, on condition the Deft. be confined in a jail or treatment type institution for TWO (2) MONTHS, the remainder of the sentence of imprisonment is suspended and the Deft is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this court., AND FINED \$1000. on each of COUNTS 5, 6, 7, 8, (TOTAL FINE \$4000.) FINE IS NOT A COMMITTED FINE. Deft continued released on own recognizance, pending appeal -- WYATT, J.

INDICTMENT

[Filed May 24, 1973]

The Grand Jury Charges:

On or about each of the dates hereinafter set forth, in the Southern

District of New York, ROBERT L. WOLF, the defendant, unlawfully, wilfully,
and knowingly did attempt to evade and defeat a large part of the income tax
due and owing by himself to the United States of America for the calendar years
1966, 1967, 1968, and 1969 by preparing and causing to be prepared,
signing and causing to be signed, mailing and causing to be mailed, and
filing and causing to be filed with the District Director of Internal Revenue

Service for Manhattan, New York, New York, a false and fraudulent income tax
return on behalf of himself wherein it was stated that his taxable income for
each respective calendar year was the amount hereinafter set forth and that the
amount of income tax due and owing thereon was the amount hereinafter set
forth, whereas, as said defendant then and there well knew his taxable income
for each respective calendar year was approximately the amount hereinafter set
forth, upon which there was due and owing to the United States of America an
income tax of the approximate amount hereinafter set forth:

Count	Calendar <u>Year</u>	Income Reported	Tax Stated on Return	Taxable Income	Tax Owed	Date
1	1966	\$10,819.63	\$2,221.30	\$35,000	\$13,000	4/15/67
2	1967	\$ 4,659.58	\$ 791.92	\$27,000	\$ 9,000	4/11/68
3	1968	\$12,412.09	\$2,867.83	\$54,000	\$26,000	4/10/69
4	1969	\$3,699.25	\$ 666.86	\$46,000	\$21,000	4/10/70

(Title 26, United States Code, Section 7201.)

COUNTS FIVE THROUGH EIGHT

The Grand Jury further charges:

On or about each of the dates hereinafter set forth, in the Southern District of New York, ROBERT L. WOLF, the defendant, unlawfully, wilfully, and knowingly did make and subscribe United States individual income tax returns for the calendar years 1966, 1967, 1968, and 1969, respectively, which returns were verified by a written declaration that they were made under the penalties of perjury and were filed with the District Director of Internal Revenue Service for Manhattan, New York, New York, and which returns he did not believe to be true and correct as to every material matter, namely, the amount of said defendant's gross receipts shown on Schedule C of said returns reported therein, whereas ROBERT L. WOLF then and there well knew the true gross receipts for Schedule C of said returns were in excess of the respective reported amounts as follows:

Count	Calendar Year	Gross Receipts Reported	Gross Receipts Omitted	Date
5	1966	\$30,116.42	\$24,000	4/14/67
6	1967	\$29,212.41	\$22,000	4/11/68
7	1968	\$31,550.01	\$42,000	4/10/69
8	1969	\$30,971.17	\$42,000	4/10/70

(Title 26, Triced States Code, Section 7206(1).)

/s/

Foreman WHITNEY NORTH SEYMOUR, Jr.
United States Attorney

-5-LOUIS BENDER CABLE: "GOLELLN" COUNSELOR AT LAW 225 BROADWAY **NEW YORK, N. Y. 10007** LOUIS BENDER SANDOR FRANKEL BARCLAY 7-6000 October 29, 1973 Murray Appleman, Esq. Suite 925 253 Broadway New York, New York 10007 Dear Mr. Appleman: This will confirm the recent conversation with you and with Dr. Wolf in which it was agreed that, if your request to Judge Wyatt for an adjournment of Dr. Wolf's trial date is granted, Mr. Bender's office will request leave to appear as trial counsel for Dr. Wolf. The above is, of course, subject to the fee previously agreed upon between Dr. Wolf and Mr. Bender. Very truly yours, anion Frankel SF/mr SANDOR FRANKEL

Murray Appleman Attorney at Law

253 Broadway, New York, N.Y. 10007

8 Authorap Drive

Blauvel, New York 10913

Talgrhone 914 359-5979

Talgrhone 918 SMTSCER 349 8635

October 30, 1973

Hon. Inzer B. Wyatt
Judge
United States District Court
Southern District of New York
U.S. Court House
New York, New York 10007

Re: United States of America

Robert L. Wolf 73 Cr 486

Request for Adjournment Trial Date: 11/13/73

Dear Sir:

On Wednesday, October 24, 1973, I was informed by Dr. Robert L. Wolf, the defendant in this action, that he, after recent lengthy inspection of the Government's assertions, desires Louis Bender, Esq. 225 Broadway, New York, N.Y. to be trial counsel.

It should be noted that compliance with the discovery and inspection requested at the inception of this case was first complied with on or about October 12, 1973. Subsequently, after intensive discussions with Dr. Wolf, who at that time was first able to consider and recognize the extent of the Government's case, a decision was made that he wants Louis Bender, Esq. as trial counsel. The defendant has indicated that if the Government's case had been disclosed sooner, he would have been able to make this decision at an earlier date and thus been able to avoid the necessity for this request for adjournment of the trial date presently scheduled for November 13, 1973.

I have been notified by Louis Bender, Esq., that solely due to prior commitments, he cannot accept the present trial date and thus would only consent to be trial counsel if an adjournment can be had.

Therefore, in order to comply with my client's desire for his defense to be conducted by Louis Bender, Esq., it is respectfully requested that an adjournment be granted with regard to this matter.

Respectfully submitted,

Minus Aplina

cc. Assistant U. S. Attorney Ecbbie Lawyer

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CHAMBERS OF INZER B. WYATT JUDGE U. S. COURT HOUSE NEW YORK, N. Y. 10007

October 30 1973

Murray Applebaum Attorney at Law 253 Broadway, New York, N.Y. 10007

Dear Mr. Applebaum:

Judge Wyatt has your letter of October 30 and asks me to advise you that there can be no adjournment of the trial date which was set on last June 14.

In case there are any pretrial issues to consider I have enclosed a copy of the memorandum sent to counsel concerning the procedures to be followed.

Sincerely
Edward Turan
Colombia John
Law Clerk to Judge Wyatt

Murray Appleman Attorney at Law

253 Broadway, New York, N.Y. 10007
8 Bullstay Drive
Blauvell, New York 10913
Telephone 914 359-5979
Telephone 81855555555 349 8635

November 5, 1973

Hon. Inzer B. Wyatt Judge United States District Court U. S. Court House New York, New York 10007

Re: United States of America

Robert L. Wolf

73 Cr 486 Permission to Withdraw

Dear Sir:

On November 3rd and November 5th, 1973, I was directed by Dr. Robert L. Wolf to immediately withdraw as counsel from this case. I was also advised that he is retaining new counsel.

I have been recently informed that a letter from Dr. Wolf was delivered to Judge Wyatt's chambers stating that he did not want me to represent him. Therefore I, in good conscience based on his present attitude and behavior, cannot render the proper representation to which he is entitled. Thus I respectfully request to be released as counsel from the aforementioned case.

Respectfully submitted,

Murray Appleman

In Total Conference. 14:45

10%.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CHAMBERS OF INZER B. WYATT JUDGE U. S. COURT HOUSE NEW YORK, N. Y. 10007

November 5,1973

Murray Appleman Esq Attorney at Law 253 Broadway, New York, N.Y.

> Re: United States v Wolf 73 Cr. 486

Dear Mr. Appleman:

In reply to your letter of November 5, Judge Wyatt asks me to advise you that he will relieve you as counsel in this matter when substitute counsel prepared to try the case on November 13 appears. Until such time that he is able to relieve you you may be oblige to sit in Court at the trial available for Dr. Wolf if the latter desires to counsult you.

Sincerely,

Edward Turan

Edward Tim Law Clerk to Judge Wyatt

ROBERT LAWRENCE WOLF, M.D. 20 EAST 74TH STREET

REGENT 4-5833

92024 Comba 4, 1973

Dear Judge Wigatt::

Decure without delay the services of another attorney.

The qualities of firstice and favories Aupport this require for the reasons that I have only mour learned that my present altorney has had an absence of trial experience and the prosecutor has deloyed excessively in supplying us with the much meeded documents that define the while of our defense. By reason of this hinderance together with the complicated and intricate points peculiar to this case we have not been able to complete our defense. Not only fine we not

ROBERT LAWRENCE WOLF, M. D 20 EAGT 74TH STREET NEW YORK, N. Y. 10021

REGENT 4-5833

completed our definse preparations but significant and scrious disagreements bitucen my present attoincy and myself-have deneloped from this and associated affairs that make own lawyer - client relationship unternable.

The administration of law should recognize my right to representation by an attorney who could serve my interests.

For these truthe 2 ask your consideration and approval for negrosentation by another attorney.

Sincorchy, Robert Worf

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CHAMBERS OF INZER B. WYATT JUDGE U. S. COURT HOUSE NEW YORK, N. Y. 10007

November 6,1973

Robert Lawrence Wolf, M.D. 20 East 74th Street New York, N.Y. 10021

' Dear Dr. Wolf:

Confirming my telephone talk with you on Monday, Judge Wyatt has your letter dated November 4 and asks me to inform you that you may be represented by whatever attorney you select but, as your present attorney Mr. Appleman has been already informed, there can be no adjournment of the trial which will commence at 10:00 a.m. on November 13 in Room 102. You realize that the trial date was set on last June 14.

Sincerely,
Edward Turan

Liwed 7000

Law Clerk to Judge Wyatt

1	lhlm [Tr. 1]
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	UNITED STATES OF AMERICA, :
6	vs. :
7	ROBERT L. WOLF, : 73 Cr. 486
8	Defendant. :
9	x
10	Before:
11	HON. INZER B. WYATT,
12	District Judge
13	New York, N. Y. November 7, 1973 - 12:45 p.m.
14	APPEARANCES:
15	ALT DAILY MODE.
16	PAUL J. CURRAN, Esq., United States Attorney,
17	For the Government. By: BOBBY C. LAWYER, Esq.
18	Assistant United States Attorney
19	MURRAY APPLEMAN, Esq. Attorney for Defendant
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[Tr. 2]

THE COURT: Mr. Clerk, I asked the defendant and the government and Mr. Appleman to come in, in United States against Robert L. Wolf.

I see Mr. Lawyer. You are Mr. Appleman and you are Dr. Wolf?

THE DEFENDANT: Yes, sir.

THE COURT: I won't keep you very long, but this conference was called so that I could personally emphasize to Dr. Wolf that trial of this indictment will commence on next Tuesday, November 13. This trial date was set on last June 14, so that the defense has had 5 months less 1 day lead time, so to speak, within which to prepare.

Since September 12, every day that the Law Journal has been published there has been an announcement that this trial would commence on November 13, which is Tuesday next.

A few days ago Mr. Appleman notified me that Dr. Wolf wanted to change counsel. I believe that I asked that Mr. Appleman be informed, and I still say Dr. Wolf can change counsel, he can select any lawyer that he wants to represent him, but the lawyer selected has to be ready to proceed to trial on next Tuesday, November 13.

Is there anything more that you want to add, Dr. Wolf, or is there anything that I can say that would make it any clearer, that I have simply got to commence the trial

1 | lhlm

[Tr. 3]

2 as scheduled?

THE DEFENDANT: Yes, sir, I would like to make a statement to your Honor.

THE COURT: Of course.

THE DEFENDANT: I would like to call to the Court's attention and to your Honor's knowledge the following information which may not be readily available to you at the moment, and that is that I was indicted only about 4 or 5 months ago, and that from that time until this moment --

THE COURT: Wait. You were indicted on May 24, so that is almost 6 months ago. The indictment was returned on May 24.

THE DEFENDANT: The mathematics appears to be correct, your Honor.

Nevertheless, from that time until this time is between 5 and 6 months, and that no complete Bill of Particulars has been supplied to us and no description of discovery until approximately 3 weeks ago, despite the fact that we, as far as I know, had repeatedly requested this information.

THE COURT: Nobody ever asked me to direct the government to do anything.

THE DEFENDANT: I call to your Honor's attention that from the moment this matter became apparent to me I repeatedly asked my counsel to secure all of the information

1 | 1hlm [Tr. 4]

necessary, including this information, so that we could prepare our case.

I also call to your honor's attention that this case involves a 4-year, complicated, involved, bank deposit type of case, and I also call --

THE COURT: Preliminarily, it does not strike me as complicated at all. It may involve many different items, but there is nothing complicated about it.

There are a number of bank accounts and there are deposits and there are withdrawals.

THE DEFENDANT: As you shall see from my next statements, there are certain complications which are out of the ordinary.

I feel that the government has overlooked substantial amounts of non-taxable receipts in the form of expense reimbursements and other types of reimbursements that have been made to me.

THE COURT: The fact that the government overlooked them is immaterial and irrelevant. That may be part of your defense.

THE DEFENDANT: Quite so, your Honor. But since we received the Bill of Particulars and the Statement of Discovery only recently, the inquiry of third party sources of reimbursement to me has only essentially just started and

lhlm ·

is substantially incomplete. Witness to that fact, your Honor, is the following:

From the time of the indictment and even shortly before that time, up until we actually received the Bill of Particulars, there were no meetings between my counsel and myself in order to prepare our defense in any fashion, despite the fact that they were extraordinarily and extremely desired by me.

[Tr.5]

In September of this year, your Honor, the United
States Government, through the Department of State and the
Atomic Energy Commission, requested that I represent our
government in an international symposium involving the use
of radioactivity in medicine, and recognizing the legal proceedings that had beset me, your Honor, I repeatedly asked
whether it would be desirable or advisable for me to go; I
maintained that I thought myself it would have been better
for me to stay here to help in the preparation of the case,
despite the fact we did not receive the Bill of Particulars
and had no meetings, your Honor, and was told that until we
did receive the Bill of Particulars and the description of
discovery, that nothing was required of me in terms of preparation.

I show your Honor, if I might, the documents that relate to the nomination of myself as the U.S. representative

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[Tr. 6]

to this International Radioactivity Conference, for which I was out of the country, your Honor, between 2 and 3 weeks.

THE COURT: This is all very flattering, and I am delighted on your behalf that the Atomic Energy Commission extended this recognition, but the Atomic Energy Commission or you should have certainly come to me and said "If I go to this meeting, I can't go to trial," and in that case I would have said right away "You shouldn't go to the meeting."

I regret that you were so imprudent as to do that, but that's your own decision. That does not cut any ice with me in the slightest.

THE DEFENDANT: I beg your honor's indulgence, but
I did not mean to be imprudent, and in fact took every effort
not to be imprudent by repeatedly asking counsel whether I
should accept the nomination and was told that I should indeed
accept the nomination and should indeed attend, physically,
the proceedings in Europe, and that my presence in this country
or in this city for the preparation was not necessary, since
that could not proceed until we got the Bill of Particulars
and the description of discovery. I did make these repeated
efforts, your Honor.

In addition to all of this, sir, during the past 8 years, I have been involved in enormous continuing matritionial litigation which has involved at least at a minimum a

| lhlm

[Tr. 7]

dozen different hearings, and as a result of all of these hearings, court cases and associated meetings of various kinds, my financial records have been distributed in various places and are not in my immediate possession at the moment. Efforts to regather all of these records were initiated when we got the Bill of Particulars, and so on, but they have not been completed.

I call to your Honor's attention the fact that no detailed, sophisticated counter analysis has been prepared for each and every year in question to meet the government's bank deposit analysis. We have had, that is my counsel and myself, a few sporadic meetings from the time that he received the complete set of Bill of Particulars and the complete description of discovery; it was submitted I am told in 2 sections. We have had a few sporadic meetings in an attempt to make our defense. But, the total time involved by me, myself, with my counsel, has not exceeded 10 to 12 hours.

This has not been done earlier, your Honor, not for any lack of desire on my part, because I have repeatedly asked counsel and other people for such an analysis for the gathering of all the data that was needed and which could be helpful, and for reasons unknown to me this has not been done.

Furthermore, I call to your Honor's attention

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[Tr. 8]

that I did not have the benefit of a hearing in the office of the Regional Counsellor in the Department of Justice in Washington. I only just learned that I was entitled to such a hearing which should have been held before my indictment--

THE COURT: I don't know of any rule of law that says you are entitled to any hearing before the Grand Jury can return an indictment.

That's an extraordinary rule of law of which I have never heard. I don't believe there is any such rule.

A Grand Jury of 23 men and women has voted an indictment and the Grand Jury is supreme, so far as the initiation of criminal process is concerned.

MR. LAWYER: Your Honor, I know he isn't finished, but before that part of it goes any further, that is a flat misstatement.

First of all, he came before the Grand Jury and he took the 5th Constantly, which is his right, but he was given opportunity to testify.

Secondly, registered letters or at least certified mail was sent to his office address and that mail was not accepted.

When he was requested by the IRS to come down for a hearing, his CPA, that is his certified public accountant, was notified that we wanted him down before Internal Revenue

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[Tr.9]

Service for a conference. Several times the appointments were made and they were broken.

So, that is simply a flat misstatement.

THE COURT: I am glad to have the information, but even if the statement were correct, it wouldn't deflect me because the Grand Jury has returned an indictment and I have to deal with it.

MR. LAWYER: It is of no consequence, I agree, but it is a misstatement.

THE COURT: Anything else?

THE DEFENDANT: The purpose of my mentioning my -the lack of such a meeting with the Department of Justice
or the Regional Counsel, therefore, in a sense, your Honor,
deprived me of any earlier statement or indication of the
government's claim.

I call to your Honor's attention that in recent weeks
there has been a growing hostility and air of disagreement
between myself and my counsel.

Interestingly enough, no statement has been taken from my accountant to my knowledge by us who has prepared or had prepared these tax returns, and he has not been interviewed in person, to my knowledge as of this moment.

The disagreements that have arisen between my counsel and myself, your Honor, are many faceted.

lhlm

THE COURT: But I am not concerned with that, Doctor.

I have said and I say again, if you want to get another lawyer, you are perfectly at liberty to do that. But all I
am telling you is that on next Tuesday, November 13, in this
room, the trial commences.

[Tr. 10]

THE DEFENDANT: I understand your statement, your Honor, and I presume that my purpose here at this moment is not only to hear that statement, which I heard previously from your office, but also to inform the Court and your Honor of the reasons that support my request.

I might add that the disagreements I believe that have arisen between my counsel and myself have come about for many reasons, and in beief I would suggest that they come about because of --

THE COURT: I'd rather not get into that matter.

THE DEFENDANT: O.K. I quite agree.

THE COURT: The relationship between client and counsel is, of course, a sacred one, and I don't want to get into it, and I am not passing any judgment on whether you are right, Mr. Appleman is wrong, or vice-versa, because I am not requiring that you have Mr. Appleman, but if you don't have a lawyer next Tuesday, then we will have to go to trial without a lawyer.

Mr. Appleman, I regret exceedingly, the position in

lhlm [Tr. 11]

which you find yourself; it is a very delicate one, and I certainly don't want to add further to the delicacy of your situation, but the only thing is that under the circumstances I am obliged to ask you to be here during the trial, available for Dr. Wolf to consult. If he does not want to consult you, he does not have to. But I want the record to show that at my request you were present and available. I think that's the key word.

Dr. Wolf, don't think I am not sympathetic with the necessities of anybody who has to answer an indictment, but I am not able to grant any adjournment.

THE DEFENDANT: I have, your Honor, if you will bear with me for a moment, 2 or 3 brief points to make.

THE COURT: Yes.

THE DEFENDANT: One is that I only recently within the past week or 2 learned that my present counsel has never tried a tax case, and I am not even sure whether he has ever tried any case in the court.

THE COURT: That does not necessarily mean a thing.

THE DEFENDANT: I just call this to your attention to establish the fact that in order for me to have, I feel, a fair and impartial trial where all facts relevant to my innocence and truthfulness are brought out, that it would

lhlm

[Tr. 12]

certainly be of great help to have a man who is skilled and knowledgeable from prior experience in court action.

I also call to the Court's attention that as far as I know, Mr. Appleman was only admitted to the District Court on May 25, which is I believe the day after you say the indictment was returned.

THE COURT: That does not have the slightest bearing in the world. If he had never been admitted to the District Court, I would admit him for the purpose of this trial. We do that all the time.

There are many lawyers who practice generally in the state courts who don't get admitted here and have had years of experience and are amongst the leaders of the bar. If they come in, I admit them for the purpose of the matter. So that does not seem to me to be of any bearing.

THE DEFENDANT: I believe the bearing would be

THE COURT: As a matter of fact, I once had the rather unique experience; a lawyer of great distinction was elected to the Supreme Court of the State of New York; and he sat for many years across the street, and I tried cases before him; I knew him well; he was a judge of great distinction; and then when he reached the mandatory retirement age, he retired, and he accepted a position as counsel

lhlm

"Judge, I am sorry to tell you, I have never been admitted to the Federal Court, and would you be willing to admit me?"

He put in his papers, and so forth, and I swore him in in my chambers. That's Judge Benjamin F. Echreiber; a great, great man.

[Tr.13]

So, Doctor, I am afraid that does not have anything to do with Mr. Appleman's qualifications, the fact that he has not been admitted to this Court. But, of course, now he has been admitted to this Court.

THE DEFENDANT: Finally, your Honor, during the past days I have interviewed counsel, in fact several counsel, up to and including even this morning, all of whom will be willing to try this case provided time is given them for preparation of the case. Without this preparation time, your Honor, these attorneys have told me, of course, that their participation would be useless.

that this delay which I crave is not for the purpose of obtaining any time which to me, since the beginning of these proceedings, has been an agony, but for the purpose of gathering together the truth for the purpose of presenting these truths to the Court in an honorable way so that my innocence could be established and that I could live in the future with

| lhlm

[Tr. 14]

2 honor.

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THE COURT: I propose to see that the trial is fairly conducted and that you are given every opportunity to establish your innocence. But the trial has to commence as scheduled on Tuesday, November 13.

Anything else?

MR. APPLEMAN: Yes, your Honor, with the Court's indulgence. I'd like to relate to the Court the number of conferences that I have had with the good Doctor. These are: April 10, 11, 12, 13, 18, 19, 20 and 24; May 1, 10, 17, 21 and 22; June 5, 6; August 28; October 3, 16, 17,18,22, 24; and November 3. So I would suggest that we have had numerous conferences, your Honor, pertaining to this case.

MR. LAWYER: All 1973, is that right?

MR. APPLEMAN: These are all 1973, your Honor, since I was retained.

Also, your Honor, it is apparent that the good Doctor will not listen to my recommendations. Without going further, because of the attorney-client privilege, I would like to put on the record the amount of the conferences I have had with the good Doctor.

THE DEFENDANT: May I reply --

THE COURT: I have said no word in criticism, Mr. Appleman. I don't mean to suggest that in the slightest.

1 | lhlm

[Tr. 15]

I sympathize with the defendant in any criminal case. But, of course, the Court as an institution has to go on.

I gave -- Dr. Wolf, you may or may not believe this -- but I gave you more advance notice of the date of trial than most of the judges do. You have had 5 months notice of the date of trial.

I would say, Mr. Lawyer, that it would run 2, 3 months, if that much.

MR. LAWYER: That's true.

THE COURT: As a matter of fact, there is a famous case on its way to the Court of Appeals, I understand, when the parties were notified in the afternoon to be ready the next morning, and it happened in that case that the government witnesses were on a fishing trip and they asked for 2 days' adjournment and they were not given it, and the indictment was dismissed.

Doctor, you must not feel that you have been discriminated against or mistreated in any way because you have had 5 months' notice, and I only asked you to come down here so that I could emphasize to you personally that under all the circumstances and considering the directives under which we operate, but also considering fully the points that you have made here this morning, I have got to direct that the Court -- that the trial go on.

1 ||lhlm

[Tr. 16]

MR. LAWYER: Your Honor, may I just say a couple of things?

Dr. Wolf has referred to a Bill of Particulars on several occasions, and, of course, your Honor requested a copy of the Bill of Particulars yesterday. There was no formal Bill of Particulars, as such. It was just a list of discovered material that the government turned over to Mr. Appleman.

THE COURT: I understand that the government gave
the defendant practically a preview of the government's
case and that the charts, some of them, list the government's
exhibits.

MR. LAWYER: I gave Mr. Appleman what he asked for, your Honor.

MR. APPLEMAN: I received all the bank deposits with the testimony relating thereto.

MR. LAWYER: He wanted to see copies of other sets which are readily available in my office, which he can see.

I might point out that Mr. Appleman is a former special agent with the IRS; he has investigated tax cases.

THE COURT: It certainly is relevant. If anybody knows tax law, Mr. Appleman would know it, far more than I do.

lhlm

MR. LAWYER: Certainly far more than I.

THE COURT: In order to try this case, I have got to do an awful lot of studying. I am no tax expert, but a man who has been in the field is perfectly at home in it.

[Tr.17]

MR. LAWYER: He is also a CPA, your Honor.

THE COURT: That helps, too.

MR. APPLEMAN: Your Honor, the only thing that we have here is a failure of communication between the Doctor and myself which I cannot seem to breach, and I think that is our basic problem.

THE COURT: That's unfortunate, Mr. Appleman; and, Doctor, I would seriously reconsider my attitude, just to be certain that you are right.

But, in any event, until you have got somebody who is prepared to sit here and try the case next week, I am going to ask Mr. Appleman who is a member of the bar to sit here and be available. You don't have to use him if you don't want to.

All right. Mr. Clerk, we will be in recess until 2:00 e'clock.

(Court adjourned.)



GOVERNMENT EXHIBITS

G X 5

U. S. INDIVIDUAL TAX RETURNS FOR DR. ROBERT LAWRENCE WOLF: ABSTRACTED DATA

	1966	1967	1968	1989
Gross Receipts as Medical Doctor Less: Business Deductions Net Income (or Loss) from Profession Wages - Mt. Sinai Hospital Dividends - Loss Exclusion Interest Income Net Cain from Sale of Stock Total	\$30,116.42 25,990.40 \$ 4,126.02 8,269.99 642.70 435.77 3,159.52 \$16,634.00	\$29,212.41 26,113.19 \$ 3,099.22 8,446.30 1,432.05 809.08 1,937.92 \$15,724.57	\$31,550.01 27,368.84 \$4,181.17 9,263.58 1,147.25 1,618.76 8,085.38 \$24,296.14	\$30,971.17 \$6,505.69 \$5,534.52) \$429.53 \$220.00 \$66.31 \$12,647.65
Less: Adjustments to Income Total Adjusted Gross Income Leus: Itemized Deductions Dalance Exemptions	\$16,450.63 4,431.00 \$12,019.63 1,200.00	\$15,724.57 9,864.99 \$ 5,859.58 1,200.00	\$24,296.14 10,684.05 \$13,612.09 1,200.00	\$12,647.95 7.748.60 \$ 4,699.25* 1,200.00*
Total Taxable Income Reported	\$10,819.63	\$ 4,659.58	\$12,412.09	4 3,699.25

SUMMARY OF UNREPORTED PROFESSIONAL INCOME OF DR. ROBERT LAWRENCE WOLF

Bank Deposits	1966	1967	1968	1969 GOVERNMENT EXHIBITS
CHEMICAL BANK NEW YORK TRUST COMPANY (N/K/A CHEMICAL BANK) checking A/C	\$53,124.44	\$51,411.63	\$39,827.61	\$ 45,449.33 - 20-21C; 24;28
BARCLAYS BANK D.C.O. (N/K/A BARCLAYS BANK OF NEW YORK) checking A/C		• ''	45,433.03	139,147.66 - 40-49; 528-35
CHEMICAL BANK savings A/C BANKERS TRUST CO. savings A/C BANK OF NEW YORK savings A/C	20,783.30	8,016.17 5,918.45	11,912.62	97,869.30 - 30-36; 537-38 15,264.71 - 50-51; 539 6,916.86 - 55-56A; 540
Total Deposits	\$76,239.34	\$65,346.25	\$97,173.26	\$304,647.86
Deduct Identified Deposits Not from Professional Income & Hontaxable Items:				
Salary income - Mt. Sinai Hospital Transfers - Bank accounts Transfers - Brokerage accounts Refunds & Loans Bank credit memoranda	\$ 1,392.64 - 15,500.00 -	\$ 4,730.21 15,383.60 500.00	\$ 7,231.65 11,982.62 300.00 261.95	\$ 5,320.78 - 544-47 105,820.44 - 49; 561-62 120,050.87 - 541-43; 553 2,249.64562
Total	\$15,892.64	\$20,613.81	\$19,776.22	\$233,401.73
Professional income deposited Add: Professional income received - deposited in subsequent years	\$59,346.70 - 383.20 -	\$44,732.44 815.00	\$77,397.04 944.80	\$ 71,136.13 7,338.43 - 62C-63C; 63D - 64D; 65D; 72B
Less: Professional income deposited - received in prior years	-	(383.20)	(815.00)	(864.80)- 108; 548
Add: Payments in cash and checks cashed from professional income - not deposited	\$59,729.90	1,015.00	\$77,526.84 3,565.00	\$ 77,629.76 263.20 - 549-552
Professional income received - deposited in brokerage account	-	8,564.07	681.70	553
Total Professional Income Reported Professional Income	\$60,144.90 / 30,116.42	\$54,743.31 29,212.41	\$81,773.54 31,550.01	\$ 77.802.96 30,971.17 - 1; 2, 3 & 4
BALANCE	\$30,028.48 -	\$25,530.90	\$50,223.53	\$ 46,51.79
Less: Balance of Mt. Sinai Salary Cash Fees and Check Fees Cashed Personal Checks Cashed by Dr. Wolf	\$ 5,312.06 / 415.00 /	\$ 2,092.60 1,015.00	3,565.00 4,200.00	\$ 544-547 263.20 - 549-552 3,967.04 - 520-523
Total Additional Deductions	5.727.06.	3,107.60	7.765.00	4,250.24

DR. ROBERT LAWRENCE WOLF

Summary of Taxable Income & Tax Liability

TAXABLE INCOME

Year	Per Return	Corrected	Increase
1966 1967 1968 1969	\$10,819.63 4,659.58 12,412.09 3,699.25	\$35,121.05 27,082.88 54,870.62 46,370.80	\$24,301.42 22,423.30 - 42,458.53 - 42,671.55 =
Total	\$31,590.55	\$163,445.35	\$131,854.80

TAX LIABILITY

Year	Per Return	Corrected	Deficiency
1966 1967 1968 1969	\$ 2,221.30 791.92 2,867.83 666.86	\$13,863.94 9,603.93 26,556.62 21,494.69	\$11,642.64 8,812.01 23,688.79 20,827.83
Total	\$ 6,547.91	\$71,519.18	\$64,971.27

U. S. DIST. COURT S. D. OF N. Y. ROBERT LAWRENCE WOLF, M. D. 20 EAST 74TH STREET NEW YORK, N. Y. 10021 REGENT 4-5035 February 23, 1970 Mr. Benjamin Edelstein Empire State Building Room 5522 350 Fifth Avenue New York, New York Dear Ben: Just a note to remind you that the total amount of money deposited in my checking account for the years 1965, 1966, 1967, 1968 reflects not only the total amount of money which I received from the practice of medicine but also deposits into this checking account of the checks which I received for my salary from the Mount Sinai Hospital and, checks which I received from the sale of securities (which are deposited in this account in order to prevent deficits and to be able to meet expenses), etc. I can account for every penny deposited in my checking account for these years on this basis. There is no discrepancy between the amount which I received and the amount of money deposited. Furthermore, since I lecture a great deal at medical meetings I can account for every deduction during these years for conventions, etc. I am positive that no more tax is due the government for any of these years. I still do not understand the "levy" of \$243.50 which the government obtained from my salary from Mount Sinai in 1966. Your previous explanation that this was an error on the part of the government is understandable if I receive this money back which I should in the near future. Sincerely, Robert Wolf-Robert L. Molf, M.D., F.A.C.P. EL Wibe

60V 1 5 1573

U. S. DIST. COURT S. D. OF N. Y. _

May 25, 1967

Mr. Ben Edelstein 350 Tifth Avenue Room 5622 New York, M.Y.

Dear Ben:

Enclosed are the Tax Forms for the City Rent or Occupancy Tax which I just received. Kindly handle this for me.

Thank you very much.

Very truly yours,

Robert L. Molf, M. D.

RLW: RM Enc.

DEFENDANT'S EXHIBITS

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INCOME TOY INTOKARATION

INVENTORY CERTIFICATE

1966-67-68-69

BINI 2) . EDELSTEIN & GOMEN CIPT ACCOUNTANTS & AUDITORS 350 FIFTH AVENUE NEW YORK, N.Y. 10001

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Dear Sirs: INTOKY HT. 16 7 A	IN RETIONS
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as taken under my direction, and that to the best of my knowledge and belief: 1. The quantities are correct and were determined by actual count, weight or measurement as at	
1967-2921241	The entire inventory is the unencumbered property of the company, has not been pledged as collateral, and items billed by the company up to and including the balance sheet date nor any items held on consignment; Each item or specified group of items of the inventory is priced at cost or market, whichever is lower, and esse of net realizable value; The basis of pricing and method of computation is the same as was used at the end of the previous fiscal be general basis on which cost is determined is indicated by the following encircled method — (a) first in, or average, (c) last in, first out; (d) other No obsolete, slow moving, damaged or unusable materials or merchandise are included in the inventory at excess of net realizable value;
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	Total Section, and that to the best of my knowledge and belief: so are correct and were determined by actual count, weight or measurement as at
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	or the inventory is priced at cost or market, whichever is lower, and
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first out; (b) average; (c) last in, first out; (d) other	
5 No obsolete, slow moving, damaged of	r unusable materials or merchandise are included in the inventory at
prices in excess of net realizable value;	
6. The amount stated above is a fair and	proper valuation of the inventory for inclusion in the balance sheet at
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	Very truly yours,
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Date Signed	
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ROBERT LAWRENCE WOLF, M.D.

20 EAST 74TH STREET

NEW YORK, N.Y. 10021

REGENT 4-5833

February 23, 1970

Mr. Benjamin Edelstein Empire State Building Room 5622 350 Fifth Avenue New York, New York

Dear Ben:

Just a note to remind you that the total amount of money deposited in my checking account for the years 1965, 1967, 1968 reflects not only the total amount of money which I received from the practice of medicine but also deposits into this checking account of the checkr which I received for my salary from the Mount Sinai Hospital and, checks which I received from the sale of securities (which are deposited in this account in order to prevent deficits and to be able to meet expenses), etc. I connected these years on this basis. There is no discrepancy between the amount which I received and the amount of money deposited. Furthermore, since I lecture a great leaf at medical reetings I can account for every deduction during these years for conventions, etc.

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Sincerely,

Robert Wolf.

Robert L. Wolf, M.D., F.A.C.P. RIN:bo

Gil

Treasury
Department
Circular No. 230
(Revised 7–72)

NOV 15 1973 EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

> Internal Revenue Service

31 Code of Federal Regulations Subtitle A, Part 10, as amended through June 10, 1972 Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents before the Internal Revenue Service REMITTANCE ADVICE

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RESEARCH IN THE SERVICE OF MEDICINE

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TO THE ORDER OF LA ROBERT L HALF

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RESEARCH IN THE SERVICE OF MEDICINE

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TO THE ORDER OF HUBERT L MULE HU

O.B. SEARLE 400 S

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COURT EXHIBITS

REQUEST TO CHARGE

1. Instruction regarding the presumption of a defendant's innocence, and the fact that he is clothed with the benefit of this presumption and entitled to its protection throughout the course of the trial.

If after a full and fair consideration of all the evidence and testimony you do not have an abiding conviction of the guilt of the defendant charged herein, amounting to a moral certainty, then the guilt of such defendant has not been established as the law requires, and it is your duty to return a verdict of not guilty. See United States v. Shotness Mfg. Co. (1961, CA-7 III) 227 F 2d 667 Aff'd 371 U.S. 341.

A reasonable doubt is a doubt that would cause prudent men to he sitate before acting in matters of importance to themselves. Under that, Holland v. U.S., 348 U.S. 121 (1954).

2. The requirement that an attempt to evade taxes can be wilful, it is, of course, necessarily that the person or persons making the attempt have some actual knowledge of his tax obligation, and that such obligation exceeded the amount reported by him. Otherwise then could be nothing which he could intend to evade. Having such knowledge, he can then wrongfully intend to evade his obligation or part of it..

Wilfully is used in connection with this offense means knowingly and with bad heart and with a bad intent. It means having a purpose to cheat or defraud or to do wrong in connection with a tax matter. It is not enough if all that is shown is that the defendant was stubborn or stupid, careless, negligent or grossly negligent. A defendant is not wilfully evading a tax if all that is shown is that he is careless about keeping his books. He is not wilfully evading a tax if all that is shown is that he made errors of law. He is not wilfully evading a tax if all that is shown is that he failed to hire competent bookkeepers or accountants.

The wilfullness necessary may best be described as the state of .

mind of the taxpayer herein he is fully aware of the existence of a tax

obligation to the Government which he seeks to conceal. The wilful evasion

of tax requires an intentional act or omission as compared to an accidental

or inadvertant one. It also requires a specific wrongful intent to conceal

an obligation known to exist as compared to a genuine misunderstanding of

what the law required or a bonafide belief that all receipts had been reported

by ones' employees and agents.

Now the mere fact that a taxpayer knew he had income which he did not report and did not pay a tax on, even though he knew a tax was due, is not itself alone sufficient to constrive a violation of the law here involved. There must be a wilful and positive commission of an act or acts in the attempt to evade taxes. See Berkstein v. U. S. 234 F 2d 475.

Dated: New York, N. Y. November 12, 1973 Respectfully submitted

MURRAY APPLEMAN

Attorney for the Defendant

It is the detendant's contention.

THAT then was no intentional for or omission by which he intended to concert and TAX oblighting.

THE COMMISSIONER BUT DESTANTIAL

FRANCE IS NOT MET by Showing 5.6 STANTIAL

OMISSIONS OF INCOME, FRANCE IS DELIBERATE

CONDUCT KNOWN TO be NOONG: CATELESS NESS IS NOT

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To be correct. Robert Recreation Co. V. Comm.

103 F. Y. 150.

Not traced. E. L. Iley 191. C. 631

THERE IS No fraud When the two dependents se words were His interpreted by his Accountant liven THIGH The records were careleady Kept AND THERE WAS NO ground For STIONG SUSPICION that the defendant KNON his income WAS greater THAN reported. WATEN HERESON 14TC 456 Apps dispissed CA 4 (CA-DC)

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Do Kulu

Eudu imu Frand May Not be predicated upon even "Flagrand" discrepancies in income and deduction resulting from computations made by A C.P.A. When records seece Furnished by the Taxpayer and when there is N. Affirmative evidence of Word ful intent DAVIS i Commissioner 184 F. 12 186

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 74-1194

UNITED STATES OF AMERICA,
Appellee

v.

ROBERT L. WOLF,

Appellant

Appeal from the United States District Court For the Southern District of New York

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of May, 1974, one copy of the joint appendix was mailed, first class postage prepaid, to Bobbie C. Lawyer, Esquire, Assistant U. S. Attorner, U. S. Courthouse, Foley Square, New York, New York, attorney for the United States of America.

Howard A Heffron